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March 4, 2010

Chairman John Stoesser
TOWN OF EAST TROY HALL
N9330 Stewart School Road
P.O. Box 872
East Troy, WI 53120

Re: Availability of Public Records

Dear Mr. Stoesser:

I received your e-mail communication dated March 4th regarding alleged complaints you have received in the past weeks that many Town records are not available when the Town Clerk/Treasurer is gone. You state that it is your understanding that Town records should be available during the posted office hours without exception. You further state that it is your understanding that Wisconsin Law dictates that all records including all appropriate computer files be available for viewing.

In order to address your concern, it would helpful to know more information. Did the people/person you allege to have complained to you reduce his or her request(s) for public records to writing? Even if the request was not in writing, a records custodian has to respond to a request as soon as practicable and without delay. However, the Attorney General has opined that a reasonable time to respond is within 10 days. I do not accept your understanding that Town records should be available during posted office hours without exception. I do not believe that language exists in the context of public records law. If you have a specific statutory section or Wisconsin case law suggesting otherwise, please provide it to me so I can revise my opinion. As such, if the Town Clerk/Treasurer is on vacation or otherwise out of the office, I do not believe that there will be a problem unless she is gone for more than 10 days at a time.

Additionally, I do not believe that anyone has direct access to the Town Clerk/Treasurer's computer. In the summer of 2008, I provided the latest ruling by the Wisconsin Supreme Court involving the public records law to the Town Board. Since you were not on the Board at that time, I mentioned in that letter that "of particular note, requesters are no longer provided access to peruse a municipality's or an official's computer for the purpose of looking for responsive material as long as a copy of the requested information is provided in an appropriate format." "A requester may not have access to an authority's electronic database because granting direct access poses substantial risk to the authority's database security and the authorities would not be able to redact confidential information that is not subject to disclosure." *See, WIREdata II*, 310 Wis. 2d 397, 751 NW 2d 736 (2008). Further, direct access would eliminate the ability of a records custodian

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to perform any sort of “balancing test” prior to rendering a decision on what information should be provided to a requester. However, access to computer records is not given any “higher priority” in terms of when that information has to be furnished to a requester. Thus, my opinion addressing the unavailability of the Town Clerk/Treasurer on any given day or days remains the same. I do not believe that a change in the Town Code is necessary. There is no duplication requirement for computer records in Section 19.35, such as there is for audiotapes and videotapes.

Very truly yours,

A handwritten signature in black ink, appearing to read 'James R. Mills', written in a cursive style.

JAMES R. MILLS
(State Bar No. 1024429)

JRM:sec

cc: Town of East Troy Board Members
Ms. Kim Buchanan, Town Clerk